FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 594

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND,
Petitioners

v.

ANTONIOS G. STAMPOLIS, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA AND THE SUPERIOR COURT OF PENNSYLVANIA

JOHN J. WILSON
815 Fifteenth Street, N.W.
Washington 5, D. C.

A. E. KOUNTZ
575 Union Trust Building
Pittsburgh 19, Pennsylvania

VAL J. MITCH
907 Fifteenth Street, N.W.
Washington 5, D. C.

Attorneys for Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
CITATIONS TO OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	3
CONSTITUTIONAL PROVISION AND STATUTE INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
1. Pennsylvania's exercise of jurisdiction in the circumstances of this case has deprived petitioners of their rights to due process of law under the 14th Amendment to the Federal Constitution in that the property attached is not identified with the relief sought	7
2. Two state courts have expressed conflicting views upon the federal questions of due process and construction of the Labor-Management Relations Act, 1947, affecting the administration of this Trust which have not heretofore been, but should be, determined by this Court	11
3. The Pennsylvania Court cannot acquire jurisdiction over the subject matter involved in a claim against a trust of movables which was established pursuant to authority contained in the Labor-Management Relations Act, 1947 and has its situs in the District of Columbia	13
4. The social and economic importance of welfare and retirement trusts created by collective bargaining requires that this Court determine which court has jurisdiction over their administration	17
CONCLUSION	19
APPENDIX A	1a
APPENDIX B	9a

CITATIONS

Cases: Page

Atkins v. Canadian SKF Co., 353 Pa. 312, 45 A. 2d 28 (1946) 9

Dickson v. Simpson, 172 Tenn. 680, 113 S.W. 2d 1190 (1938) 10

Hanson v. Denckla, 357 U.S. 235, 2 L. ed. 2d 1283 (1958) 15, 17

Robert Taylor Hobbs v. John L. Lewis, Civil Action No. 31,822, (Chancery Court of Hamilton County, Tennesee) (unreported) 8, 9

Hobbs v. Lewis et al., 197 Tenn. 44, 270 S.W. 2d 352 (1954) 9

David E. Kennedy, Inc. v. Schleindl, 290 Pa. 38, 137 A. 815, 53 ALR 1020 (1927) 9, 11

Kitchen v. N. Y. Trust Co., 292 Ky. 706, 168 S.W. 2d 5 (1943) 15

Lines v. Lines, 142 Pa. 149, 21 A. 809 (1891) 15

Palmer v. Bank of Sturgeon, 281 Mo. 72, 218 S.W. 873 (1920) writ of error dismissed, 258 U.S. 603, 66 L. ed. 785 (1922) 10

Pennoyer v. Neff, 95 U.S. 714, 24 L. ed. 565 (1877) .. 17

Sadler v. Industrial Trust Co., Trustees, 327 Mass. 10, 97 N.E. 2d 169 (1951) 15

Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 1 L. ed. 2d 972 (1957) 11

U.M.W.A. v. Daniel, 317 S.W. 2d ——, 35 Labor Cases ¶71,889 (Ct. of App., Ky., 1958) 15

United Marine Division v. Essex Transportation Co., 216 F. 2d 410 (C.A. 3, 1954) 14

Statutes:

Labor-Management Relations Act § 302, Title III, c. 120, 61 Stat. 157, 29 U.S.C.A. 186 ..... 3, 4, 5, 7, 8, 9, 10, 11, 16, 18

Tenn., Chap. 127 Acts of 1859-60, modified, 1932 Code, § 9406 ..... 9, 10

Miscellaneous:

93 Cong. Rec. 4678 (1947) 13

Living Trusts of Movables in the Conflict of Laws, 45 Harvard Law Review, 969 15

Restatement of the Conflict of Laws, Section 299 .. 14

S. Rep. No. 1734, 84th Cong., 2d Sess. 18

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No.

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND,
Petitioners

v.

ANTONIOS G. STAMPOLIS, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA AND THE SUPERIOR COURT OF PENNSYLVANIA

John L. Lewis, Henry G. Schmidt and Josephine Roche, Trustees of the United Mine Workers of America Welfare and Retirement Fund (hereinafter sometimes referred to as the "Trustees" and the "Trust", respectively), Petitioners, pray that a Writ of Certiorari issue to the Superior Court of Pennsylvania in which judgment was entered June 11, 1958,

and to the Supreme Court of Pennsylvania which on September 22, 1958 refused to review the said judgment of the Superior Court in *Stampolis* v. *John A. Lewis, Henry G. Schmidt and Josephine Roche, Trustees, et al.*, No. 64 April Term, 1958. (The number of the case in the Supreme Court of Pennsylvania is 2191 A. Misc. 1958.) The record is presently in the files of the Supreme Court of Pennsylvania.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Common Pleas of Allegheny County, Pennsylvania, is unreported and is printed in Appendix A to this Brief, page 1a. The opinion of the Superior Court of Pennsylvania, printed in Appendix A, page 4a, is reported in 186 Pa. Super., 285, 142 A. 2d, 348. The Supreme Court of Pennsylvania denied a petition for allowance of appeal from the Superior Court by an order *per curiam*, without opinion (R. 87).

JURISDICTION

The judgment of the Superior Court of Pennsylvania was entered June 11, 1958 (R. 82). The Supreme Court of Pennsylvania denied a petition for leave to appeal on September 22, 1958 (R. 87); reconsideration by the Supreme Court of Pennsylvania was denied on November 5, 1958 (R. 87). The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Section 1257(3), since your petitioners claim an immunity from suit in the instant case under the statutes of the United States and the due process clause of the 14th Amendment to the Constitution of the United States.

QUESTIONS PRESENTED

1. Whether a Pennsylvania Court, by foreign attachment, can, without violating the due process clause of the 14th Amendment, exercise jurisdiction over the trustees of a trust of movables where the trustees are non-residents of Pennsylvania and the trust, established pursuant to the authority of the Labor-Management Relations Act, 1947, has its situs in the District of Columbia.

2. Whether a Pennsylvania Court can, without violating the due process clause of the 14th Amendment, exercise jurisdiction over the subject matter involved in a claim against a trust of movables by an alleged beneficiary where the trustees are non-residents of Pennsylvania and the trust was established and has its situs in the District of Columbia.

3. Whether a trust of movables in the District of Columbia can constitutionally be brought before the Courts of Pennsylvania by the foreign attachment of monies payable generally to the trust, where the claim of the plaintiff is for declaration of his entitlement to a pension from a separate and distinct irrevocable pension fund to which such monies have not been and may not be transferred by the Trustees.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Constitutional provision involved is the due process clause of the 14th Amendment to the Constitution of the United States.

The statutory provision involved is Section 302, Title III, c. 120, 61 Stat. 157, 29 U.S.C.A. 186. It is printed in Appendix B, page 9a.

STATEMENT OF THE CASE

Antonios G. Stampolis, respondent, filed a complaint in assumpsit against the Trustees and the Trust. The action was initiated by causing the Court of Common Pleas of Allegheny County, Pennsylvania, to issue a writ of foreign attachment to the Pittsburgh Consolidation Coal Company, Garnishee, naming the individual trustees of the Trust and the Trust as defendants, and directing the constructive seizure of royalty payments owed defendants under the terms of the Trust created, pursuant to Section 302(c) of the Labor-Management Relations Act, 1947, (hereinafter referred to as the "Act") (29 U.S.C. 186(c)), by the trust instrument contained in the National Bituminous Coal Wage Agreement of 1950, as amended. Petitioners were not found in the State of Pennsylvania.

The prayers of the complaint are for "judgment against the defendants to redress the breach of trust herein complained of and that the defendant trustees * * * be ordered and directed to pay to plaintiff a monthly pension * * *." (R. 18). Restated, the complaint seeks (1) a judicial reversal of the Trustees' administrative determination that plaintiff is not eligible for pension benefits, and (2) direction to the Trustees to make payments which they could, as a matter of law, make only from the separate Pension Account—the Pension Account being established and maintained in Washington, D.C. pursuant to the above mentioned agreement and statute.

Petitioners appeared specially and solely to contest jurisdiction. Petitioners' preliminary objections asserted that neither the Trustees, being non-residents of Pennsylvania, nor the Trust, which was created pur-

suant to the authority granted by Section 302 of the Act (29 U.S.C. 186) and which has its situs in the District of Columbia, could be made subject to the jurisdiction of the Courts of Pennsylvania because of the protection of the due process clause of the 14th Amendment.* After interrogatories and other pleadings, the parties stipulated certain facts (R. 28) which, to the extent relevant, may be summarized as follows:

1. The Trust is irrevocable. It was created March 5, 1950 in Washington, D. C. by a written instrument known as the National Bituminous Coal Wage Agreement of 1950 between certain Bituminous Coal Operators and the United Mine Workers of America pursuant to Section 302(c) of the Act. The Trustees are appointed by the parties to the Agreement.

2. The Trustees of the Trust, now and since the inception of the Trust, maintain offices and a place of business for themselves and their employees in Washington, D. C. where the Trustees hold all meetings. The minutes of the Trustees' meetings and the records of the Trust are kept in Washington and all remittances by the operators signatory to the Agreement are received there. All monies of the fund and all evidences of investment of assets, consisting entirely of personal property, are kept in Washington, D. C.

3. All monies paid into the Trust, nearly 850 million dollars between March 5, 1950 and June 30, 1956, have been deposited in a General Account maintained by the

---

*The Federal questions (1) of due process under the 14th Amendment and (2) arising from the statutes of the United States were likewise presented to both the Superior Court and the Supreme Court of Pennsylvania (R. 93).

Trust in Washington, D. C. The Trustees have established and created a separate fund under the Act known as the Pension Account which is also maintained exclusively in Washington, D. C. From time to time the Trustees, by formal action, provide for and direct the transfer of certain sums of money from the General Account of the Trust to the Pension Account, and the amount of money so designated is irrevocably paid over to the Pension Account to be used exclusively for the payment of pensions.

4. The Trustees, pursuant to the trust instrument contained in the National Bituminous Coal Wage Agreement of 1950, as amended, have adopted regulations and procedures embracing requirements of eligibility for pension, hospital and medical care benefits, funeral expenses and widow and survivor benefits which must be met in order for applicants to receive benefits from the Trust. During the fiscal year ended June 30, 1956, 206,919 individuals received benefits.

5. The Trustees have adopted regulations for each of the benefits provided by the Trust. From the day of the creation of the Trust to June 30, 1956, $366,000,000 had been used for the payment of pensions to eligible beneficiaries. As of June 30, 1956, pensions were being paid to 61,546 retired miners.

* * * * * *

The Court of Common Pleas of Allegheny County sustained Petitioners' preliminary objection and dismissed the complaint for want of jurisdiction on January 23, 1958. (R. 75; Appendix A, page 1a).

On appeal the Superior Court of Pennsylvania, by opinion dated June 11, 1958 (R. 83; Appendix A,

page 4a), reversed the Court of Common Pleas, two judges dissenting.

Petitioners sought leave to appeal to the Supreme Court of Pennsylvania. That petition was denied by the Supreme Court on September 22, 1958 in a *per curiam* order without opinion. (R. 87). Reconsideration was denied by the Supreme Court of Pennsylvania on November 5, 1958 (R. 87).

REASONS FOR GRANTING THE WRIT

1. Pennsylvania's exercise of jurisdiction in the circumstances of this case has deprived petitioners of their rights to due process of law under the 14th Amendment to the Federal Constitution in that the property attached is not identified with the relief sought.

The proceeding below involves a complaint in assumpsit—filed in a Pennsylvania state court on the basis of a writ of foreign attachment—which seeks not the satisfaction of a debt but a determination that plaintiff-respondent meets the pension eligibility requirements established by the trustees of an *inter vivos* trust of movables, which was created pursuant to Section 302(c)(5) of the Act (29 U.S.C. 186(c)(5)) and has its situs in Washington, D. C.* The monies attached are royalty payments due to the Trustees prior to their payment by one of the settlors of the Trust.

Title to all monies paid into and or due and owing the Trust, including those seized, is vested solely in the Trustees, (R. 16), but the Trustees cannot lawfully

* The only prayers of the complaint, other than for production of documents, are for (1) judgment against the Trustees for breach of trust and (2) direction to the Trustees to pay a pension to the plaintiff. Both deal with instructions to the Trustees or a determination of their obligations under trust instruments which are not even before the court.

utilize these general trust funds to satisfy a pension claim. Section 302(c)(5)(C) of the Act (29 U.S.C. 186(c)(5)(C)) forbids the payment out of the funds seized—the funds of the general account—by requiring that pension benefits be paid only out of a separate trust as follows:

> "* * * such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities."

The stipulated facts show that the Trustees from time to time by formal action, pursuant to Section 302 (c)(5)(C) of the Act, irrevocably transfer certain sums from the General Account of the Trust to the separate Pension Account (R. 32-33; paragraphs 31-34 of Stipulation). Therefore, unless and until such transfer is made, tonnage royalty payments due and payable by coal mine operators are not a legal source of relief from which plaintiff-respondent may obtain redress. Those funds are an unallocated sum, a portion of which may or may not ultimately find its way into the separate Pension Account. There is no formula for segregation that would permit a portion of the attached funds to be designated "pension funds". It follows that any decree requiring the attached funds of the general Trust to be utilized for pension purposes would be tantamount to a decree of a state court requiring the Trustees to violate the express terms of Section 302(c)(5)(C) of the Act.

In an identical case the Chancery Court for Hamilton County, at Chattanooga, Tennessee, in *Robert Taylor Hobbs* v. *John L. Lewis,* Civil Action

No. 31,822 (a certified copy of which opinion has been deposited with the Clerk of this Court and a copy of which has been sent respondent), the court recognized the separate nature of general trust funds and the funds of the Pension Account out of which only pensions are payable pursuant to Section 302(c)(5)(C) of the Act (29 U.S.C.A. 186). The court concluded that the attachment of funds of the general Trust did not confer jurisdiction for payment of pensions from the Pension Account, which account was not before the court. The reasoning of the court was that the attachment of the assets of the general Trust:

> "* * *-did not bring before this Court any property out of which satisfaction could be had of any judgment which might be rendered in the present action in favor of the complainant and hence did not bring before the Court for the purposes of this suit, either constructively or otherwise, the Trustees of the Fund sought to be reached in this case."

The Supreme Court of Tennessee in *Hobbs* v. *Lewis*, 197 Tenn. 44, 270 S.W. 2d 352 (1954), though not ruling specifically on this subject, sustained the findings of the Chancery Court denying jurisdiction by reason of the foreign attachment in the State of Tennessee:

A Pennsylvania action commenced on a writ of foreign attachment confers no personal jurisdiction over a defendant, *Atkins* v. *Canadian SKF Co.*, 353 Pa. 312, 45 A. 2d 28 (1946), *David E. Kennedy, Inc.* v. *Schleindl*, 290 Pa. 38, 137 A. 815, 53 ALR 1020 (1927), such as could require the Trustees in the case at bar to perform the administrative act of granting a pension to the plaintiff-respondent.

The asserted jurisdiction is analogous to that contemplated by Section 9406 of the 1932 Tennessee Code

(Chapter 127 of the Acts of 1859-60, modified) which authorized indirect attachments. The Supreme Court of Tennessee in *Dickson* v. *Simpson,* 172 Tenn. 680, 113 S.W. 2d 1190 (1938), held unconstitutional the authority granted by the statute for a Tennessee claimant to attach, in a resident correspondent bank, money owed the non-resident defendant's non-resident bank, i.e., to attach in the hands of A monies owed B which B in turn owed the claimant's debtor, the defendant. The determination that such a statute violates the requirements of due process is in accord with the Supreme Court of Missouri's holding in *Palmer* v. *Bank of Sturgeon,* 281 Mo. 72, 218 S.W. 873 (1920), writ of error dismissed on other grounds, 258 U.S. 603, 66 L. ed. 785 (1922).

As pointed out above, while the monies seized in the present case are owed to the Trustees, they are not identified with the Pension Account, the only source from which the relief sought by the plaintiff can lawfully be obtained. Here as was true under the Tennessee statute, the attachment is too remote. A seizure of funds due and owing to the General Account of the Trust is not a seizure of pension funds nor does it confer *in personam* jurisdiction on the Trustees in their capacity as the Trustees of the irrevocable pension trust created pursuant to Section 302(c)(5)(C). (29 U.S.C. 186).

2. Two state courts have expressed conflicting views upon the federal questions of due process and construction of the Labor-Management Relations Act, 1947, affecting the administration of this Trust which have not heretofore been, but should be, determined by this Court.

The decision of the Superior Court of Pennsylvania does not turn upon a construction of that State's writ of foreign attachment statute. Instead, it is a determination that the courts of Pennsylvania possess power to entertain jurisdiction over the administration of a trust created and maintained in Washington, D. C. by virtue of the authority of Section 302(e)(5) of the Act (29 U.S.C. 186(e)(5))—a part of a statute wherein Congress has utilized its well recognized federal power to regulate the labor-management relations of businesses engaged in interstate commerce. *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 457, 1 L. ed. 2d 972 (1957). The extent to which the due process clause of the 14th Amendment permits the exercise of extra-territorial jurisdiction by state courts over the administration of a non-resident *inter vivos* trust of movables created pursuant to such Congressional authority, is a federal question that should be resolved by this Court.

In connection with the basic jurisdictional question, we respectfully call to the Court's attention the decision of the Supreme Court of Tennessee in *Hobbs* v. *Lewis*, 197 Tenn. 44, 270 S.W. 2d 352 (1954), since the Pennsylvania decision now under attack is diametrically opposed to it.

Hobbs v. *Lewis, supra*, is identical with the present case, and, indeed, relates to the same Trust. It was initiated by foreign attachment against the then Trustees, all of whom were located outside the state.

The claim asserted by the plaintiff in that proceeding, like the claim asserted herein, was for pension rights. The Supreme Court of Tennessee affirmed the lower court's decision dismissing the action, holding, 197 Tenn. at page 49:

> "* * * Since the situs of this trust of movables is at Washington, D. C., it seems necessary to hold, both by reason of principle as well as by persuasive precedent, that the Courts of Tennessee have no jurisdiction to entertain Hobbs' suit for any purpose connected with the administration of that trust."

The Superior Court of Pennsylvania recognized the precedents relied upon by the Supreme Court of Tennessee, but refused to abide by them without citing authority for deviating from established trust law.

The refusal of the Supreme Court of Pennsylvania to grant petitioners' application for leave to appeal leaves the petitioner-Trustees faced with two opposite determinations of a federal question by the state courts. The ultimate resolution of that question depends upon a decision by this Court. Until this occurs, petitioners face the risk of differing and conflicting obligations in 26 states, and individual claimants under a single trust have the likelihood of being treated differently dependent entirely upon the place where the question is litigated.

Petitioners believe that the orderly and consistent discharge of their responsibilities requires that jurisdiction be limited to the court at the situs of the Trust. However, there can in no event be either reason or logic in permitting different practices concerning the impact of constitutional limitations of due process on the judi-

cial supervision of the administration of a trust created under authority of a federal statute. Petitioners' immunity or lack of immunity to suit should not turn on a state's own ideas of the application of the substantive principles of due process. Constitutional limitations of this kind must be the same from state to state. They cannot vary with the geographical accident of a claimant's place of residence or with his deliberate and preconceived choice of a favorable forum.

Accordingly, it is submitted that the nature and extent of the requirements of due process as applied to judicial control over the administration of *inter vivos* trusts of movables should be resolved by this Court on this petition.

3. The Pennsylvania Court cannot acquire jurisdiction over the subject matter involved in a claim against a trust of movables which was established pursuant to authority contained in the Labor-Management Relations Act, 1947 and has its situs in the District of Columbia.

Congress did not create a new *legal* concept when it provided for welfare and retirement trusts under the Act. Instead, it conditioned certain otherwise unlawful payments upon the creation and administration of an *inter vivos* trust. Its purpose and intent were succinctly put by Senator Ball:

> "* * * the sole purpose of the amendment is not to prohibit welfare funds, but to make sure that they are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them, and that they shall not degenerate into bribes." 93 Cong. Rec. 4678 (1947).

The courts have recognized this intent:

> "* * * [The persons designated by both employers and employees] are trustees of a fund and have fiduciary duties in connection therewith as do any other trustees. * * *" *United Marine Division v. Essex Transportation Co.*, 216 F. 2d 410 (C.A. 3, 1954).

The Congressional intent in providing for welfare and retirement trusts was to be certain that such funds were paid into such trusts to be used only for the welfare of employees and related beneficial purposes. Employees were to have an opportunity to enforce their asserted rights against the trust in a court, and the trustees were to be amenable to the courts for the administration of these trusts in the same manner as other *inter vivos* trusts of movables.

The Trust involved was created pursuant to a written instrument executed in Washington, D. C. (R. 29). The settlors of this Trust, like the creators of any other trust, were entitled to establish a "locale" or place for the administration of its functions. Here they intended and declared that the situs should be in Washington, D. C. Accordingly all of its assets and evidences of investment of assets are, and have been, maintained there, where the "machinery" for administration is located. (R. 30). Under general trust law the court at that situs is the only one from which instructions for administration of the Trust can issue. The rule is stated in the Restatement of the Conflict of Laws, Section 299 without qualification or caveat:

> "The administration of a trust of movables is supervised by the courts of the state only in which the administration of the Trust is located."

The basic issue posed for determination in the complaint below is eligibility for pension benefits. Its resolution depends upon the interpretation of the trust created by the trust instrument contained in the National Bituminous Coal Wage Agreement of 1950 and the regulations adopted by the Trustees thereunder. That interpretation must be made by the courts at the situs of the trust, *Lines* v. *Lines*, 142 Pa. 149, 21 A. 809 (1891), *Sadler* v. *Industrial Trust Co., Trustee*, 327 Mass. 10, 97 N.E. 2d 169 (1951) cited with approval in *Hanson* v. *Denckla*, 357 U.S. 235, 2 L. ed. 2d 1283 (1958); *Kitchen* v. *N. Y. Trust Co.*, 292 Ky. 706, 168 S.W. 2d 5 (1943). See also the decision of the Kentucky Court of Appeals in *U.M.W.A.* v. *Daniel*, 317 S.W. 2d —, 35 Labor Cases ¶ 71,889 (October, 1958).

The sound basis for holding that Pennsylvania can acquire no jurisdiction over the subject matter of the Trust by a writ of foreign attachment is spelled out in *Living Trusts of Movables in the Conflict of Laws*, 45 Harvard Law Review, 969:

> "Any question which arises after the trust has come into being is a question of the administration of the trust. Such question relates to the trustee's duties, the investments he may make, to whom he must pay income or principal, where he must account; the assignability of the interest of the beneficiary, and the power of his creditors to reach the trust *res* or its income; and the right of a beneficiary to terminate the trust.
>
> "All matters of administration are determined by the law of the *situs* or seat of the trust.
>
> * * * * * *

> "The question to what court a trustee of a living trust is responsible in the matter of instructions and accounting is of much importance. Although it is not generally understood, *it must be clear that a trustee must be responsible to the courts of one state only; otherwise, conflicting instructions and differences as to accounts will make the administration of a trust impossible.* If one court is to give instructions and orders to a trustee and to approve his accounts, that court must clearly be one of the state of the seat of the trust; and it has been held that only such a court can instruct, control or remove the trustee." (Emphasis supplied).

We have seen that Congress intended to authorize the creation of welfare and retirement trusts subject to judicial supervision similar to that exercised over other *inter vivos* trusts of movables, and that the law regarding *inter vivos* trusts of movables requires that they shall be administered only by the court at the situs of the trust. It therefore follows that Congress must have intended a trust created pursuant to the authority of the Act to be responsible in matters of administration only to the court at the trust's situs.

This interpretation is fortified by the express language of Section 302(c)(5) of the Act. (29 U.S.C. 186 (c)(5)). Congress anticipated possible "deadlock on the administration of such fund[s]" among the trustees and provided for the appointment of a neutral to break such deadlocks "by the district court of the United States for the district *where the trust fund has its principal office.*" (emphasis supplied). It may be concluded therefrom that Congress evinced a legislative intent that a trust permitted under this statute should be dealt with as any other trust of

movables in that the court at its situs should be solely responsible for the judicial regulation of its administration.

The logic in concluding that jurisdiction over the administration of the trust is limited to the court at the situs is apparent. To hold, as the Superior Court of Pennsylvania has held in the present case, that the courts of various jurisdictions may direct the Trustees in their administration of the Trust inevitably means conflicting directions which will leave the Trustees in doubt as to their obligations and the beneficiaries in doubt as to their rights.*

4. The social and economic importance of welfare and retirement trusts created by collective bargaining requires that this Court determine which court has jurisdiction over their administration.

This is a case of great social and economic importance. The Final Report of the Senate Subcommittee on Welfare and Pension Funds, issued in 1954, emphasizes that fact as follows:

> "1. Private employee welfare and pension programs have grown to such proportions in this country * * * as to place upon the Government a grave responsibility * * *.
>
> "(a) Over 75 million persons, employees and dependents, or about one-half the population of the Nation, are covered in some measure

* Although the *in personam* extra-territorial jurisdiction of state courts has been expanded since *Pennoyer* v. *Neff*, 95 U.S. 714, 24 L. ed. 565 (1877), the jurisdiction which Pennsylvania asserts still denies Petitioners substantive due process. The "minimal contacts" required to uphold jurisdiction, *Hanson* v. *Denckla*, *supra*, 357 U.S. at 251, can be found for matters of the administration of trusts of movables only in the court at the situs. The orderly administration of justice permits no other course.

by employee welfare and pension programs. * * *

"(b) Over $6.8 billion yearly are being contributed to such programs. * * *" S. Rep. No. 1734, 84th Cong., 2d Sess., p. 6.

The creation of welfare and retirement trusts through collective bargaining and the benefits provided by them have aided a vast segment of the industrial population of the country and have had a steadying influence on labor-management relations. These trusts add greatly to the security of the employees. They contribute substantially to their welfare and that of their families, a bulwark against hopeless adversity. These trusts likewise benefit industry in that the alleviation of uncertainty and unrest as to the future by the provision for the security of the employees is reflected in production, and they remove from the industry involved the responsibility for the welfare and retirement needs of the employees. As in the case of all economic aids, these trusts also inure to the benefit of the nation's economy. Accordingly, these trusts are to be encouraged and protected within the framework of the most efficient and effective administration possible; they are a tribute to the free enterprise system of the United States.

The Trust Fund here involved arose from collective bargaining processes between management and labor, and the monies paid into the Trust Fund pursuant to contract are conferred in benefits upon eligible beneficiaries who necessarily must be employees of employers contributing to the Trust (29 U.S.C.A. Section 186(c)(5)). The Trust, which petitioners represent, extends benefits to persons in 26 states, including Alaska. During the twelve months ended June 30,

1956, 206,919 persons were benefited, 61,546 of whom were receiving pensions as of that date. The fact that so many states are embraced within the beneficial scope of this Trust causes the case at bar to be enhanced in importance. Bestowing jurisdiction on numerous courts other than that at the situs of the Trust would throw into chaos and greatly hinder and frustrate its sound administration. To remove from the Trustees the jurisdictional protection recognized in the law of trusts would cause the Trustees to be subject to conflicting instructions of a wide and diverse nature from courts of many states. Furthermore, to cause the Trustees to be subject to the jurisdiction of courts other than that at the situs of the Trust will tend not only to make administration of the Trust difficult, but also to make *uniform* administration impossible. The assumption of jurisdiction by courts other than at the situs of this and similar trusts, therefore, presents a significant Federal question which should be decided by the Supreme Court of the United States.

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JOHN J. WILSON
A. E. KOUNTZ
VAL J. MITCH
Attorneys for Petitioners

December 19, 1958

APPENDIX

APPENDIX A

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

ANTONIOS G. STAMPOLIS, *Plaintiff*

vs.

JOHN L. LEWIS, CHARLES A. OWEN and JOSEPHINE ROCHE, Trustees of the UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND and the UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND (and PITTSBURGH CONSOLIDATION COAL COMPANY, Garnishee), *Defendants.*

No. 2350 October Term, 1956

Foreign Attachment In Assumpsit

Before: Soffel, Cercone and Kennedy, JJ.

Opinion

KENNEDY, J.

This action in assumpsit was initiated by plaintiff with the issuance of a Writ of Foreign Attachment directed against funds held by the Pittsburgh Consolidated Coal Company, a contributor to the defendant trust fund, together with hundreds of other bituminous coal operators who employ U. M. W. of A. miners in numerous counties of many states where there are such coal deposits being mined. Plaintiff's complaint avers that he has been a member of a Local of the U. M. W. of A. for many years; that he is over sixty years of age; that he has been a coal miner for more than thirty years and that he is qualified to receive a pension of $100.00 monthly from the Welfare and Retirement Fund under the provisions of the National Bituminous Coal Wage Agreement of 1950, and the by-laws of the U. M. W. of A.; that he made application to the trustees of the retirement fund for such a pension and same was refused. Hence, this suit in assumpsit.

Defendants have appeared specially and de bene esse, filing preliminary objections alleging lack of jurisdiction and requesting the court to set aside the service and quash the Writ of Foreign Attachment.

The parties stipulated as to the material facts and from this agreement we learn that the defendant is an irrevocable trust created by the National Bituminous Coal Wage Agreement of 1950 pursuant to the Labor Management Relation Act of 1947. This agreement was executed in Washington, D. C., where the trust, since its inception, has maintained its offices and place of business; has received and deposited all its funds, which funds are made up of a royalty of thirty cents a ton (now, by amendment, forty cents a ton) and has now totaled over eight hundred million dollars and is applied not only to the payment of retirement pensions but also many other fringe benefits to the miners, their families and their widows, etc.; has purchased government bonds; has made common stock investments in accordance with the "List of Legal Investments for Trust Funds in the District of Columbia"; has all meetings, official records, assets (all personal property) and carries on any other business of the trust.

It is also evident that the trustees, being three in number, are residents of different states, that the Pittsburgh Consolidated Coal Company is neither an agent, employee or representative of the defendant and that defendant has no person or body designated as their representative in Allegheny County or for that matter in the Commonwealth of Pennsylvania. It is clear that the situs of the trust is in Washington, D. C., and in order to maintain an action against the trust the Court must have jurisdiction of the subject matter and defendant must be properly served.

We have carefully read the authorities cited by counsel for the plaintiff to maintain his contention that this court can obtain jurisdiction over the trustees and any of the fund or royalties located within its jurisdiction and seized

by servicing the garnishee with a Writ of Foreign Attachment. The authorities are not in point and, therefore, need not be analyzed. Suffice it to say that none of them create an exception under the stipulated facts in this proceeding. Service has not been accomplished as it is the court located at the situs of the trust which has authority to determine questions of trust administration and service, via a Writ of Foreign Attachment, against one who by contract must turn over funds to the defendant trust cannot become service upon the defendant within the meaning and spirit of the law.

See: Lines v. Lines, 142 Pa. 149; Restatement of Conflict of Laws, secs. 297-299; Zaremenko v. United Mine Workers Fund, 105 P.L.J. 5; Kitchen v. New York Trust Co., et al., 292 Ky. 702, 168 SW (2nd) 5; and Hobbs v. John L. Lewis, et al., 197 Tenn. 44, 270 SoW. (2nd) 352, which is a proceeding almost exactly analogous to this one now before us. We adopt this analysis of the case from defendant's brief; "In that case, proceeding by a writ in the nature of our writ of foreign attachment (called in Tennessee a writ of garnishment), that plaintiff claiming that he is entitled to a pension from us filed his action in a court of original jurisdiction in Tennessee. Thereupon the question of jurisdiction was there raised by our defendants, through a plea in abatement, which is the method provided therefor by Tennessee law. It was held in that case that jurisdiction was lacking and that the case would be dismissed. The opinion of the Supreme Court of Tennessee (filed July 2, 1954) reported in 197 Tennessee 44, 270 SoW. 2nd 352, is not only decisive upon the question but contains also an illuminating discussion of the general subject here involved. It was there held in that said case that the situs of our trust is in the District of Columbia; that it is a trust of moveables; that it can be supervised only in the courts of the District of Columbia. The Tennessee Supreme Court repeated the general rules of law to the effect that "a trust of moveables is supervised by the courts of that State only

in which the situs of the trust is located." The Supreme Court of Tennessee in that said opinion (as we have related hereinabove) presented the entire proposition in a manner in which could leave no doubt of the justice of the principle. The editor of Bogert, Trusts and Trustees, Volume 4, Part I, Sec. 871, Pocket Supplement, and also Volume 2, Sec. 255, Pocket Supplement, has adopted the principle established by the Supreme Court of Tennessee in that said case in the following language:

> "Where a pension fund trust for coal miners is being operated by residents of the District of Columbia and with regard to personal property located there, a citizen of Tennessee may not secure from a court of that state a decree for the enforcement of the trust, where no personal service was had on the trustees. Hobbs v. Lewis, 1954, 270 S.W. 2d 352, 197 Tenn. 44."

It is, therefore, our opinion that the preliminary objections questioning venue of this court should be sustained, the writ of attachment quashed and the proceeding dismissed.

* * * * * * * * * *

IN THE SUPERIOR COURT OF PENNSYLVANIA

ANTONIOS G. STAMPOLIS, *Appellant*,

v.

JOHN L. LEWIS, CHARLES A. OWEN and JOSEPHINE ROCHE, Trustees of the UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND and the UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND (and PITTSBURGH CONSOLIDATION COAL COMPANY, Garnishee).

No. 64 April Term, 1958.

Appeal from the Order and Opinion of the Common Pleas Court of Allegheny County at No. 2350 October Term, 1956

Opinion by Ervin, J.

FILED: JUNE 11, 1958

This action in assumpsit was initiated by plantiff, a miner, with the issuance of a writ of foreign attachment directed against funds held by the garnishee, a mine operator, and owing to the defendant, the Welfare and Retirement Fund, created under an agreement entered into in 1950 between the mine operators and the United Mine Workers of America, a labor union. The plaintiff seeks a pension from the Fund. The Fund appeared de bene esse and filed preliminary objections alleging lack of jurisdiction. The court below quashed the writ and the plaintiff took this appeal.

The facts, as stipulated by the parties, reveal that the 1950 agreement provided that the operators pay to the trustees of the Fund thirty cents a ton (now, by amendment, forty cents a ton) on each ton of coal mined on the properties of the operators throughout the country. The agreement was executed in Washington, D. C. and provided that the trust should have its place of business in Washington, D. C., which it has done. All of its property is personal, in the form of stocks, bonds and cash, and has been kept in Washington, D. C. Generally, the purposes of the Fund are (1) to make payments from the Fund "for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or life insurance, disability and sickness insurance or accident insurance; (2) benefits with respect to wage loss not otherwise compensated for at all or adequately by tax supported agencies created by federal or State law; (3) benefits on account of sickness, temporary disability, permanent disability, death or retirement; (4) benefits for any and all other purposes which may be specified . . .; and (5) benefits for all other related welfare purposes as may be determined by the Trustees. . . ." The

three trustees, none of whom reside in Pennsylvania, were appointed pursuant to the 1950 agreement and § 302(c) of the Labor-Management Relations Act, 1947, 29 U.S.C.A. § 186, one by the operators, one by the union and the third was selected by the first two.

The action in the court below was based upon the Act of June 13, 1836, P.L. 568 et seq., 12 PS § 2861 et seq., and subsequent amendments. The writ was issued pursuant to Pa. R.C.P. No. 1251 et seq., which provide that foreign attachment may be issued to attach the property of a defendant upon any cause of action at law or in equity in which the relief sought includes a judgment or decree for the payment of money when the defendant is an unincorporated association without a regular place of business in the Commonwealth or is a foreign corporation or similar entity. Rule No. 2151 defines "association" as meaning an unincorporated association conducting any business or engaging in any activity of any nature whether for a profit or otherwise under a common name. Rule No. 2176 defines "similar entity" as any insurance association or exchange or any other association which is regarded as an entity distinct from the members composing the association. The word "association" is defined in Black's Law Dictionary, Third Edition, as: "The act of a number of persons in uniting together for some special purpose or business. The persons so joining. It is a word of vague meaning used to indicate a collection of persons who have joined together for a certain object." 7 C.J.S. § 1 set forth that the word "association" "is used to indicate a collection of persons who have united or joined together for some special purpose or business. . . . The term 'association' is often used as synonymous with 'company' or 'society.'"

The purpose of the action of foreign attachment is to compel the appearance of nonresident defendants. Raymond v. Leishman, 243 Pa. 64, 89 A. 791. The Supreme Court has recently ruled that two fundamental facts must

co-exist to sustain the action of foreign attachment: (1) nonresidence and (2) real or personal property within the Commonwealth: Fairchild Engine & Airplane Corp. v. Ballanca Corp., 391 Pa. 177, 137 A. 2d 248. These facts do co-exist in the instant case.

There is respectable authority for the principles of law that a trust of movables created by an instrument inter vivos is administered by the trustee according to the law of the state where the instrument creating the trust locates the administration of the trust, Restatement, Conflict of Laws, § 297, and that the administration of a trust of movables is supervised by the courts of that state only in which the administration of the trust is located, Restatement, Conflict of Laws, § 299. See also: Hobbs v. John L. Lewis et al., 197 Tenn. 44, 270 S.W. 2d 352; Kitchen v. New York Trust Co. 292 Ky. 702, 168 S.W. 2d 5. The rationale of these authorities is that a trustee should be responsible to the courts of one state only in order to avoid conflicting instructions which would make the administration of the trust difficult. There is also good authority for the principle of law that if a court has jurisdiction of the trust res, it may render a judgment in rem or quasi in rem affecting a nonresident defendant constructively summoned with reference to the res in the court's control but it may not render a judgment in personam: Heinz's Estate, 313 Pa. 6, 9, 169 A. 365; Jones v. Jones, 344 Pa. 310, 317, 25 A. 2d 327; 90 C.J.S. § 454(a); 15 A.L.R. 2d 618. We are impressed by the thought that thousands of miners throughout the land should also be entitled to some consideration. Surely their convenience should be considered as well as that of the trustees. The trustees in six years received over $800,000,000 from this source, a considerable portion of which came from Pennsylvania, and they can better afford to come here and litigate than can the miners go to Washington, D. C. to do so. It should also be remembered that the miner is not a disgruntled charity patient and that

this fund only came into being as a direct result of the labor of the miners. This is not pure charity upon the part of the operators but really is a quid pro quo for the miners' labor. We are inclined to believe that the equities balance in favor of the miners, who should really be considered as third party beneficiaries of the Fund. While we hesitate to differ with the conclusions of some courts of neighboring states, we are firmly convinced that greater justice will prevail in the view that we have taken.

We decide only that the court below had jurisdiction of the res caught by the writ of foreign attachment. We do not intend to interfere with the prerogative of the court below to determine any issues on the merits. We are unable to determine from the present pleadings what the real defense to the plaintiff's claim is. If the defendants elect to file an answer on the merits, their defense will be revealed. Whether it is a valid defense and what law should be applied in the event there is a conflict between the forum and the situs of the trust are questions which must be met if and when they arise.

Order reversed with leave to appellees to file an answer on the merits within twenty days after the filing of this order in the court below.

Judges Gunther and Wright would affirm upon the opinion of Judge Kennedy for the court in banc.

APPENDIX B

Section 302, Title III, C. 120, 61 Stat. 157, 29 U.S.C.A. 186

§ 186. Restrictions on payments to employee representatives; exceptions; penalties; jurisdiction; effective date; exception of certain trust funds.

(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization; *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing

of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held

therein cannot be used for any purpose other than paying such pensions or annuities.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 17 of Title 15 and section 52 of this title, and the provisions of sections 101-110 and 113-115 of this title.

(f) This section shall not apply to any contract in force on June 23, 1947, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) Compliance with the restrictions contained in subsection (c) (5) (B) of this section upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c) (5) (A) of this section be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits. June 23, 1947, 3:17 p.m., E.D.T., c. 120, Title III, § 302, 61 Stat. 157.

FILE COPY

Office-Supreme Court, U. S.
FILED
JAN 19 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

NO. 394

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, Trustees of the United Mine Workers of America Welfare and Retirement Fund, Petitioners

v.

ANTONIOS G. STAMPOLIS, Respondent

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA AND THE SUPERIOR COURT OF PENNSYLVANIA

D. B. TOBE and
CHARLES E. McKISSOCK
416-417 Bakewell Building
Pittsburgh 19, Pennsylvania
Attorneys for Respondent

THE FINCH CO. INC. LAW PRINTERS 434-438 BLVD. OF ALLIES PITTSBURGH 19 PA

INDEX

	PAGE
Citations to Opinions Below	1
Questions Presented	2
Statement of the Case	2
Reasons for Denying the Writ	
1. The *Petition for Writ of Certiorari to the Supreme Court of Pennsylvania and to the Superior Court of Pennsylvania,* filed by petitioners, in this Honorable Court, is premature	4
2. State courts should not be denied judicial review over labor welfare and retirement funds where such states have a direct and substantial interest in such funds	8
Conclusion	12

CITATIONS

CASES:

Hanson v. Denckla, 357 U.S. 235, 2 L.Ed. 2d 1283 5

Hobbs v. Lewis, 194 Tenn. 44, 270 S.W. 2d 352 ..... 7, 8

Pennoyer v. Neff, 95 U.S. 714, 24 L. Ed. 565 .....5, 6, 7

STATUTES:

Labor-Management Relations Act Sec. 302, Title III, c 120 et seq., 61 Stat. 157, 29 U.S.C.A. 186 et seq. 7, 8, 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

NO. 594

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, Trustees of the United Mine Workers of America Welfare and Retirement Fund, Petitioners

v.

ANTONIOS G. STAMPOLIS, Respondent

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA AND THE SUPERIOR COURT OF PENNSYLVANIA

Antonios G. Stampolis, respondent herein, respectfully prays that the *Petition for Writ of Certiorari to the Supreme Court of Pennsylvania and to the Superior Court of Pennsylvania*, filed by *John L. Lewis, Henry G. Schmidt and Josephine Roche, Trustees of the United Mine Workers of America Welfare and Retirement Fund*, at the above number and term of this Court, be denied.

CITATIONS TO OPINIONS BELOW

The opinion of the Superior Court of Pennsylvania is reported in 186 Pa. Super. 285, 142 A. 2d. 348. The opinion of the Superior Court of Pennsylvania and of the Common Pleas Court of Allegheny County, Pennsylvania, are printed in the Appendix A at pages 4a and 1a, respectively, of petitioners' Petition.

QUESTIONS PRESENTED

1. Is the *Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania and to the Superior Court of Pennsylvania,* filed by petitioners in this Honorable Court, premature?

2. Should state courts be denied judicial review over labor welfare and retirement funds where such states have a direct and substantial interest in such funds?

STATEMENT OF CASE

Antonios G. Stampolis, respondent herein, on September 5, 1956, caused to be issued a Writ of Foreign Attachment under the Pennsylvania Rules of Civil Procedure. Said Writ was duly served upon Pittsburgh Consolidation Coal Company as garnishee, said Coal Company stipulating that it would retain from remittances to the United Mine Workers of America Welfare and Retirement Fund $7,000.00 to be held to satisfy any judgment rendered in said action. A complaint in assumpsit was duly issued and served upon said garnishee. Petitioners, appearing specially and de bene esse, filed preliminary objections in the nature of a petition raising the question of jurisdiction. After the filing of interrogatories and cross-interrogatories, the parties stipulated some relative facts to aid the lower court. The lower court, after argument, sustained said preliminary objections and quashed the Writ of Foreign Attachment, from which respondent appealed to the Superior Court of Pennsylvania. The Superior Court of Pennsylvania sustained respondent's contention that the lower court had jurisdiction over funds attached by

the Writ of Foreign Attachment. Petitioners twice attempted to have the Superior Court's decision reviewed by the Supreme Court of Pennsylvania and failed on both attempts. Petitioners now seek to have the Supreme Court of the United States review the record below.

The United Mine Workers of America, a union, as a result of industry wide bargaining entered into the National Bituminous Coal Wage Agreement of 1950 with coal operators, wherein was created the United Mine Workers of America Welfare and Retirement Fund (Hereinafter called the Fund). The Fund was to administer certain fringe benefits, unemployment and death benefits; all pursuant to rules to be promulgated by the "Board of Trustees". Respondent, Antonios G. Stampolis, at the time of suit, was and still is a member of said union, was and still is of advanced age, 69 years of age, poor and impoverished and unable to do any remunerative work. Respondent had been continuously employed in the mining industry for thirty-nine years and upon reaching sixty-five years of age, applied for pension benefits from said Fund and the pension was denied without explanation. Respondent complied with all the rules and regulations of said Fund and provisions promulgated thereunder by the petitioners. Respondent then brought the action in the court below to compel payment of pension benefits due and owing to him.

REASONS FOR DENYING THE WRIT

1. The Petition for Writ of Certiorari to the Supreme Court of Pennsylvania and to the Superior Court of Pennsylvania, Filed by Petitioners in This Honorable Court, Is Premature.

Petitioners at number one of their REASONS FOR GRANTING THE WRIT of their petition fail to set forth any action of the courts of Pennsylvania which has denied them their property without due process of law; thus no federal question was raised.

Despite petitioners insistence that Pennsylvania courts have exercised in personam jurisdiction over them, the Pennsylvania courts have not. The record shows no judgment entered against any of the petitioners individually, collectively or as officers of the United Mine Workers of America Welfare and Retirement Fund and no judgment entered against the United Mine Workers of America Welfare and Retirement Fund (hereinafter called the Fund) as an entity. Referring to the text of Justice Ervin's opinion in the Superior Court of Pennsylvania in the present case (page 8a of petitioners' Appendix), the Justice set forth:

> ". . . We decide only that the court below had jurisdiction of the res caught by the writ of foreign attachment. We do not intend to interfere with the prerogative of the court below to determine any issues on the merits. We are unable to determine from the present pleadings what the real defense to the plaintiff's claim is. If the defendants elect to file an answer on the merits, their defenses will be revealed. Whether it is a valid defense and what law should be applied in the event there is a conflict between the forum and the situs of the trust are

questions which must be met if and when they arise."

This Honorable Court, in the celebrated case of *Pennoyer v. Neff*, 95 U.S. 714, 246 L. Ed. 565, in an opinion written by Mr. Justice Field, has set forth that where non-residents' property situated within a state is first attached, to that extent the State court can exercise jurisdiction in rem over the property attached. The decision of the Superior Court of Pennsylvania in the present case is in conformity with Mr. Justice Field's opinion and is in conformity with the opinion of Mr. Chief Justice Warren in the case cited by petitioners, *Hanson v. Denckla*, 357 U.S. 236, 246, 2 L. Ed. 2d 1283 (citing McDonald v. Mabee, 243 U.S. 90, 91).

Petitioners do not attack Pennsylvania civil procedure because it fails to duly notify non-residents of an action against them or that non-residents have no time to defend claims against them—thus resulting in a denial of their property without due process of law. Petitioners quarrel that the Pennsylvania courts have upheld a foreign attachment of their property within Pennsylvania to satisfy the claim of a Pennsylvania citizen. That the Pennsylvania courts have this right is dealt with by Mr. Justice Field in the case of *Pennoyer v. Neff*, supra, at page 723:

> ". . . So the State, through its tribunals, may subject property situated within its limits owned by non-residents to the payment of the demands of its own citizens against them; and the exercise of this jurisdiction in no respect infringes upon the sovereignty of the State where the owners are domiciled. Every State owes protection to its own citizens; and, when non-residents deal with them, it is a legitimate and just exercise of authority to hold and

appropriate any property owned by such non-residents to satisfy the claims of its citizens. It is in virtue of the State's jurisdiction over the property of the non-resident situated within its limits that its tribunals can inquire into that non-resident's obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property. . . .

". . . These views are not new. They have been frequently expressed, with more or less distinctness, in opinions of eminent judges, and have been carried into adjudication in numerous cases. . . ."

Petitioners in effect would enjoin the Pennsylvania courts from entertaining the present attachment even before the basic questions going to the merits are raised and presented to the lower courts of Pennsylvania. As is set forth in the opinion of the Superior Court of Pennsylvania, all that that court had before it was the writ of attachment, the Complaint of respondent and petitioners' objections raising the question of jurisdiction. Thus, petitioners have not been denied due process of law.

Petitioners in this petition seek to raise questions going to the merits of the case which were not before the lower courts—identity of the funds attached and administration of the Fund. Petitioners contend that by upholding the attachment of funds not yet allocated by petitioners, themselves, between petitioners' general bank account and petitioners' pension bank account, the Pennsylvania courts have deprived petitioners of their property without due process of law. Certainly the simple expedient of a bookkeeping entry by petitioners, themselves, cannot change the complexion of the fund attached or result in a denial of due process in one in-

stance and not result in a denial of due process in another instance. Petitioners contend the action of the court below is administering the Fund. The courts of Pennsylvania have sustained the foreign attachment of petitioners' funds, nothing more.

Mr. Justice Field, in *Pennoyer v. Neff*, supra, specifically sets forth that it is a legitimate and just exercise of authority of a state to hold and appropriate ANY property owned by such non-resident to satisfy the claims of its citizens.

Petitioners in number two of their REASONS FOR GRANTING THE WRIT imply that Tennessee and Pennsylvania courts have expressed conflicting views upon the federal question of due process and construction of the Labor-Management Relations Act of 1947.

The Pennsylvania courts in the instant case have entered no judgment against the petitioners upon which petitioners can claim a denial of property without due process of law and they have not expressed any views of the federal question of due process of law and they have not construed the Labor-Management Relations Act of 1947 in any way, shape or form. The Tennessee courts, in the case of *Hobbs v. Lewis*, 197 Tenn. 44, 270 S.W.2n, 352, expressed no views on any federal question and has not construed the Labor-Management Relations Act of 1947. Said court erroneously granted immunity to judicial process within its boundaries to the Fund, although by so doing it deprived miners of the protection, benefits and blessings of their local courts.

At best, one might say that two courts have reached different conclusions, but this alone does not amount to

a denial of property without due process of law or raise a federal question.

The Pennsylvania courts in the instant case are not convinced by the Tennessee court's decision in the *Hobbs* case that they also should abdicate their responsibility to thousands of union welfare and pension fund beneficiaries who have worked for years to create the Fund.

Petitioners at page thirteen of their petition would have this Honorable Court set down the requirements of due process as applied to state control of trusts. Not only is such a prayer without the scope of their Petition, but it is not yet decided whether the Fund in question is an inter-vivos trust within the meaning of the word as applied in the field of trusts.

The exceedingly narrow question in this case is whether or not a state can maintain an attachment of the property of a non-resident defendant.

2. State Courts Should Not Be Denied Judicial Review Over Labor Welfare and Retirement Funds Where Such States Have a Direct and Substantial Interest in Such Funds.

Congress intended that state courts should have the right of judicial review over labor welfare and retirement funds. Congress intended that employees were to have an opportunity to enforce their rights against such trusts in state courts. Trustees were to be amenable to the courts in the same manner as other trusts. Senator Ball set forth the purpose and intent of the Labor-Management Relations Act of 1947 as being for the purpose of preventing welfare funds contributed by employers from degenerating into bribes. The Act itself,

at section 186 (c) (2), excepts payments between employers and employee representatives by reason of settlement or compromise of complaints or grievances directed by courts or arbitrators. The Act itself, at section 186 (e), limits federal court jurisdiction to injunctive relief for violation thereof, purposely allowing state courts jurisdiction over other relief, enforcement and supervision.

The Act provides that pension moneys be deposited to a pension trust account that can only be used for that purpose. Obviously, this was to prevent "raiding" of welfare pension funds and not to prevent the payment of pensions from other monies of such welfare and retirement funds. Otherwise "trustees" of such pension funds might never deposit moneys into pension accounts.

Pennsylvania is a highly industrialized state and consequently is vitally interested in labor welfare and pension plans affecting a vast number of citizens of Pennsylvania. Pennsylvania has for generations been a leader in coal production and therefore has a substantial and vital interest in the United Mine Workers of America Welfare and Retirement Fund. As indicated by the Superior Court of Pennsylvania and stipulated by petitioners, Pennsylvania coal operators have contributed a substantial portion of the Fund's $826,000,000.00.

Petitioners quite naturally are displeased with a decision of the Pennsylvania courts, which embraces that field of trust law authority that protects the interests of thousands of Pennsylvania coal miners. Justice Ervin of the Pennsylvania Superior Court (page 7a of petitioners' Appendix) set forth:

". . . There is also good authority for the principle of law that if a court has jurisdiction of the trust res, it may render a judgment in rem or quasi in rem affecting a non-resident defendant constructively summoned with reference to the res in the court's control but it may not render a judgment in personam . . . (citing Pennsylvania cases in support thereof) . . . We are impressed by the thought that thousands of miners throughout the land should also be entitled to some consideration. Surely their convenience should be considered as well as that of the trustees. The trustees in six years received over $800,000,000.00 from this source, a considerable portion of which came from Pennsylvania, and they can better afford to come here and litigate than can the miners go to Washington, D.C. to do so."

The United Mine Workers of America Welfare and Retirement Fund is not court supervised. Petitioners would have this Honorable Court codify what courts have jurisdiction over what trusts. Labor welfare and pension funds are innumerable. Each fund and plan must be examined upon its own merits and as the situation arises. Petitioners, although denying a pension to an aged miner nearly 70 years old who has worked nearly 40 years in the coal mines, speak grandly and eloquently of the great benefit labor welfare and retirement funds have brought to industry and employees and the nation and the economy and nearly everyone else. Although asked, petitioners have failed to inform the courts of Pennsylvania of the number of past denials of medical, welfare, funeral and pension benefits to Fund beneficiaries.

Justice is not a stream which flows in one direction, although petitioners would like to have it that way.

Petitioners themselves make good use of the courts within the boundaries of any one state to enforce collection of monies allegedly owing to the Fund by coal operators; but petitioners would like to deprive the impoverished coal miner of the right to stand before the bar of justice in his local court and to recover monies rightfully owing to him by the Fund, although in that very jurisdiction the Fund recovers many millions of dollars as a direct result of the labor of the miners; as Justice Ervin of the Pennsylvania Superior Court (7a of petitioners' Appendix) so well stated:

> "It should also be remembered that the miner is not a disgruntled charity patient and that this fund only came into being as a direct result of the labor of the miners. This is not pure charity upon the part of the operators but really is a quid pro quo for the miners' labor. We are inclined to believe that the equities balance in favor of the miners, who should really be considered as third party beneficiaries of the Fund . . . we are firmly convinced that greater justice will prevail in the view that we have taken."

Petitioners would like to be immune to judicial process in Pennsylvania and in every other state and when this immunity is not granted unto them they complain that their constitutional rights are violated! They say nothing about the constitutional rights of the impoverished coal miner to whom they would deny access even to his local courts—well knowing that this amounts to justice being denied him. If the petitioners were to succeed in establishing such a precedent, and thus gain immunity from judicial process in every state in the union, then based upon such a precedent there would be nothing to prevent the petitioners from endeavoring to gain immunity to the judicial process of even our federal courts.

Conclusion.

The Pennsylvania courts have determined that petitioners are more than a magnanimous charitable trust and fatherly trustees. Petitioners are officials of a non-court supervised labor welfare and retirement fund charged with administering fringe benefits resulting from collective bargaining. The Pennsylvania courts in accordance with the law of the Commonwealth of Pennsylvania and in the exercise of common sense and in the protection of respondent's constitutional rights under the Pennsylvania Constitution Article 1, Section 11 (providing that all courts shall be open and every man for an injury done him in his property shall have a remedy by due course of law and right and justice administered without sale, denial or delay) have allowed to Pennsylvania coal miners for an injury done them, a remedy by due course of law and have made provision that right and justice be administered without denial or delay.

CONCLUSION

The *Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania and the Superior Court of Pennsylvania* should be denied.

Respectfully submitted,

D. B. TOBE and
CHARLES E. MCKISSOCK,
Attorneys for Respondent.

January 16, 1959.

FILE COPY

Office-Supreme Court, U.
FILED
FEB 17 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 594

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, Trustees of the United Mine Workers of America Welfare and Retirement Fund,
Petitioners

v.

ANTONIOS G. STAMPOLIS, *Respondent*

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania and the Superior Court of Pennsylvania

PETITIONERS' REPLY BRIEF

JOHN J. WILSON
815 - 15th Street, N. W.
Washington 5, D. C.

A. E. KOONTZ
575 Union Trust Building
Pittsburgh 19, Pennsylvania

VAL J. MITCH
907 - 15th Street, N. W.
Washington 5, D. C.

Attorneys for Petitioners

PRESS OF BYRON S. ADAMS WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 594

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, Trustees of the United Mine Workers of America Welfare and Retirement Fund,
Petitioners

v.

ANTONIOS G. STAMPOLIS, *Respondent*

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania and the Superior Court of Pennsylvania

---

PETITIONERS' REPLY BRIEF

Respondent has said (Answer to Petition, page 8) that "The exceedingly narrow question in this case is whether or not a state can maintain an attachment of the property of a non-resident defendant". The petition presents no such question. The general appli-

cability of foreign attachment statutes, as respondent suggests, has been long settled. We believe that the distinction between general applicability to non-residents and applicability to trustees who are responsible to courts of another jurisdiction is too obvious to require comment. However, it does point up the relative ease with which the court below applied inapplicable precedent to reach its decision that the Pennsylvania Courts had jurisdiction over a claim for a pension from a District of Columbia trust.

Respondent places heavy reliance on the opinion of the Superior Court of Pennsylvania, the decision with respect to which petitioners seek a writ of certiorari. It is respondent's only citation of authority to support jurisdiction.

The opinion in the Superior Court of Pennsylvania (Petition, App. A, pp. 4a-8a) deals with the field of trust law and jurisdiction over *inter vivos* trusts and the trustees of such trusts in a single paragraph (*Ibid,* p. 7a). Judge Ervin there notes the thesis of trust law set forth in Section 299 of the Restatement, Conflict of Laws, namely, that the administration of an *inter vivos* trust of movables is supervised by the courts of that state only in which the administration of the trust is located. That doctrine, plus the precedent of courts both in Pennsylvania and in other jurisdictions adhereing thereto, formed the basis of Judge Kennedy's opinion for the three judge court in the Court of Common Pleas of Allegheny County (Petition, App. A, pp. 1a-4a), an opinion which Judges Gunther and Wright of the Superior Court would have affirmed. The existence of that doctrine is unchallenged.

Judge Ervin's opinion states another proposition of trust law in juxtaposition to that relied upon by Judge Kennedy, namely, "that if a court has jurisdiction of the trust res, it may render a judgment in rem or quasi in rem affecting a non-resident defendant constructively summoned with reference to the res in the court's control but may not render a judgment in personam". The Pennsylvania cases relied upon to support that proposition are not quoted by the respondent (Answer, p. 10) except by parenthetical reference to "Pennsylvania cases in support thereof". Those cases, *In re Heinz's Estate*, 313 Pa. 6, 169 A. 365 (1933) and *Jones* v. *Jones*, 344 Pa. 310, 25 A. 2d 327 (1942), do not support Pennsylvania jurisdiction over a claim to pension benefits from the Fund of which petitioners are trustees.

In re Heinz's Estate, supra, was a suit by the Pennslyvania resident settlor of an *inter vivos* trust against the Pennsylvania trustees to prevent payment to an individual non-resident cestui of accrued and accruing income from a trust corpus located and administered in Pennsylvania. The precise holding was that a proceeding in the court which had jurisdiction of "settlement of accounts of trustees of *inter vivos* trusts" was not a proceeding at law or in equity which would support an interlocutory appeal. However, there was language by way of dicta to indicate that Pennsylvania had jurisdiction both to hear the case and to restrain payment because the Orphan's Court where the case was brought was the court at the situs of the trust having responsibility for the "settlement of accounts". No question of foreign attachment against trustees or a trust was raised.

In *Jones* v. *Jones, supra,* a wife brought suit for maintenance against a deserting non-resident husband and the trustees of two Pennsylvania trusts in which her husband had a vested beneficial future interest. Suits against property in desertion cases were authorized by Pennsylvania statute and service was had personally upon the trustees of both trusts. The court noted and relied on the fact that the administration of the trusts was in Pennsylvania. It said: "The question involved is whether a husband's future interest in trusts administered in Allegheny County are such property interests and have such situs as to give the court jurisdiction". It answered the question by resting its holding upon the dual grounds of trust res plus trust situs. "* * * this Commonwealth has the power, through the presence of the trust res and the administration of the trust res, to subject appellant's interests to satisfaction of claims against him."

There is an analogy to foreign attachment in *Jones* v. *Jones* but it is the analogy of proceedings against property for desertion and procedings against property by foreign attachment for debt. Maintenance was owed and the question was whether property was available which might be used in satisfaction. Trust law was relevant only on the situs of the intangible vested beneficial future interest of the non-resident spouse. The situs of the administration was a necessary ingredient of the finding of situs of the interest. Viewed in this light, the decision supports petitioner's contentions in the present proceeding rather than the Superior Court's conclusion or respondent's argument. The situs of the Fund, the trustees, and moneys available for the pension which respondent seeks are to be found only in the District of Columbia. Just as the vested future

right in *Jones* has its situs only in Pennsylvania, so does respondent's "right" have potential situs only in the District of Columbia. That is the only jurisdiction where his entitlement to an interest in the form of a pension, the ultimate relief requested, should be determined.

Cases which support jurisdiction over a trust at the situs of its administration and the location of the trust res, despite the absence of a non-resident individual cestui, are no support for upholding jurisdiction on the basis of the foreign attachment of funds of a trust administered in another jurisdiction by non-resident trustees. Those cases are free of the Constitutional limitation of due process which arises where the administration of the non-resident trust is already subject to the direction of the court at its situs.

Only in one additional, minor respect do petitioners feel it necessary to reply to respondent's answer. Respondent's assertion on page 3 that "the pension was denied without explanation", and that he had "complied with all the rules and regulations" of the Fund would be categorically controverted if and when the merits of the case are reached. Since the question of jurisdiction was raised preliminarily by petitioners, no answer has yet been filed to the complaint below.

It is respectfully submitted that the petition should be granted.

JOHN J. WILSON
A. E. KOUNTZ
VAL J. MITCH
Attorneys for Petitioners

February 17, 1959